IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

WP(C).No. 21744 of 2007(L)

PETITIONER:

K.A.NATARAJAN, MANAGING PARTNER,
M/S. SINCERE OFFSET, ENGLISH CHURCH ROAD, PALAKKAD
.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SRI.JIBU P THOMAS

RESPONDENT:

THE ASSISTANT PROVIDENT
FUND COMMISSIONER E.P.F,ORGANISATION,
SUB REGIONAL OFFICE, BHAVISHYANIDHI BHAVAN, P.B.NO.
1806, ERANHIPALAM P.O., CALICUT-673 006.

BY STANDING COUNSEL SRI.THOMAS MATHEW NELLIMOOTTIL.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

WP(C) NO. 21744 OF 2007 - L

Dated this the 25th day of July, 2007

J U D G M E N T

The respondent initiated proceedings against the petitioner under Section 7C of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'the Act') for determination of dues under the Act which had escaped assessment. In spite of notice to the petitioner, the petitioner did not appear. Therefore, Ext.P2 ex parte order was passed assessing an amount of Rs.5,08,352/- as contributions payable by the petitioner for the period from October 2003 to May 2006. The petitioner's grievance is that he could not attend hearing only because of the fact that his mother was seriously ill with cancer and in fact, she died on 25.2.2007. Therefore, he filed Ext.P3 application to set aside the ex parte order and to pass a fresh order after hearing the petitioner. The petitioner submits that when the statute provides for a remedy to the petitioner by way of filing an application to set aside the ex parte order, the respondent has a

statutory duty to consider the same in accordance with law.

2. I have heard the learned Standing Counsel for the Provident Fund Organisation also. He would submit that there is no merit in the contention of the petitioner that he was prevented from appearing before the respondent because of the illness of his mother. He points out that there was, in fact, a subsequent hearing after the death of his mother, that is on 17.4.2007 on which date also the petitioner did not attend the hearing. The Standing Counsel points out that the petitioner has deliberately suppressed the employment of 21 employees which itself is a serious offence inviting prosecution under the Act and therefore, the petitioner does not deserve any leniency.

3. Whatever be the merits of the case, I am of opinion that when the statute prescribes that the employer can file an application to set aside the ex parte order and the petitioner has filed Ext.P3 application for that purpose, the respondent has a statutory duty to

dispose of the same in accordance with law. Accordingly, I direct the respondent to consider and pass appropriate orders on Ext.P3 after affording an opportunity of being heard to the petitioner. Till such time Ext.P3 is disposed of, Ext.P2 shall not be enforced.

The writ petition is disposed of as above.

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J

W.P.(C) NO. OF 2001

J U D G M E N T

DATED:01-06-2007